CUSTOMS BULLETIN AND DECISIONS

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and

U.S. Court of International Trade

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This issue contains:

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NOTICE

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U.S. Customs Service

General Notices

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., January 21, 1994.

The following documents of the United States Customs Service, Office of Commercial Operations, has been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

HARVEY B. FOX,
Director,
Office of Regulations and Rulings.

PROPOSED REVOCATION OF CUSTOMS RULING LETTERS RELATING TO TARIFF CLASSIFICATION OF DECORATIVE BOWS

ACTION: Notice of proposed revocation of tariff classification ruling letters.

SUMMARY: Pursuant to section 625(c)(1) of the Customs Modernization Act (Pub. L. 103–182), this notice advises interested parties that Customs intends to revoke three rulings pertaining to the tariff classification of decorative bows. Comments are invited on the correctness of the proposed rulings.

DATE: Comments must be received on or before March 11, 1994.

ADDRESS: Written comments are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Food and Chemicals Classification Branch, 1301 Constitution Avenue, NW., (Franklin Court), Washington, D.C. 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, located at Franklin Court, 1099 14th St., NW., Suite 4000, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Lenny Feldman, Food and Chemicals Classification Branch, (202–482–7020).

SUPPLEMENTARY INFORMATION:

BACKGROUND

In New York Ruling Letters 835867, issued February 3, 1989, and 843277, issued July 31, 1989, by the Area Director of Customs, New York Seaport, plastic bows composed of polypropylene ribbon with acrylic flocking as well as textile bows composed of 50 percent polyester and 50 percent cotton were classified in subheading 9505.10.2500, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for festive, carnival or other entertainment articles, for Christmas festivities, Christmas ornaments, at a duty rate of 5 percent *ad valorem*.

In Headquarters Ruling Letter 089892, issued October 15, 1991, by the Director, Commercial Rulings Division, Office of Regulations and Rulings, a bow composed of plastic ribbon and flocking was classified in subheading 6307.90.9490 (now 6307.90.9986), HTSUSA, which provides for other made up (textile) articles, at a duty rate of 7 percent *ad valorem*. These ruling letters are set forth in Attachments A, B, and C to this document.

Customs Headquarters maintains that merchandise is classifiable within heading 9505, as a festive article when the article, as a whole is, *inter alia,* traditionally associated or used with a particular festival. Because of their divergent functions throughout the year as, for example, home decoration and gift wrapping, it is our opinion that the bows are not traditionally associated or used with the particular festival of Christmas. The bows are not *ejusdem generis* with those articles cited in the Explanatory Notes (ENs) to 9505, as exemplars of traditional, festive articles. Therefore, neither the plastic or textile bows are classifiable as festive articles within subheading 9505.10.2500.

In regard to the plastic bows with flocking, because the flocking portion of these bows neither qualifies as "nonwovens" as referred to in Note 1(h) to Section XI or Note 3 to Chapter 56, nor as "textile fabric" as referred to in Note 2 to Chapter 59, we maintain that these notes are not indicative of the bows classification and that the bows are not classifiable as other made up textile articles within subheading 6307.90.9490 (now 6307.90.9986). As no HTSUS provision provides for the plastic bows, in their entirety, they are not classifiable at the GRI 1 level, but instead, pursuant to GRI 3(b), are classifiable by the component which gives them their essential character, in this case, the plastic ribbon. In our opinion, the plastic bows are appropriately classified within heading 3926 which provides for articles of plastics.

In regard to the textile bows, the ENs to 5806 indicate that the heading includes, *inter alia,* ribbons of man-made fibers which may be used in apparel and hats, as medal ribbons, as decorative binding material, for furnishing, etc. In our opinion, the textile bows fit this description and are appropriately classified within heading 5806 which provides for narrow woven fabrics.

Customs intends to revoke these decisions to reflect proper classification of i) the plastic bows with flocking in subheading 3926.40.0000, HTSUSA, which provides for other articles of plastics, statuettes and other ornamental articles, at a duty rate of 5.3 percent *ad valorem* and ii) the textile bows in subheading 5806.32.1090, HTSUSA, as narrow woven fabrics, of manmade fibers, ribbons, at a duty rate of 9 percent *ad valorem*. As the textile bows are classifiable in subheading 5806.32.1090, HTSUSA, they will fall within the textile category designation 229.

Before taking this action, consideration will be given to any written comments timely received. The proposed rulings revoking the New York and Headquarters ruling letters are set forth in Attachments D, E, and F to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: January 13, 1994.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, N.Y., February 3, 1989.

CLA–2–95:S:N:N3G:343 835867
Category: Classification
Tariff No. 9505.10.2500 and 9802.00.8050

MS. JUDY KEARNEY
NETWORK BROKERS INTERNATIONAL, INC.
LICENSED CUSTOMS BROKERS
Airport Industrial Office Park, Building A2–C
145th Avenue and Hook Creek Blvd.
Valley Stream, New York 11581

Re: The tariff classification of Christmas type bows from China.

DEAR MS. KEARNEY:

In your letter dated January 13, 1989, on behalf of your client, Berwick Industries Inc., you requested a tariff classification ruling.

The submitted samples are small Christmas type bows, known as "Veltex Bows" (T–1801), which are stated to be composed of polypropylene ribbons with acrylic flocking. Further, each bow is hand tied at its midsection with a metallic polyester covered wire-based tinsel.

You have stated that the above components are of U.S. origin and are Imported into China (in continuous form) to be cut to length. Thereafter, the ribbon lengths will be folded in a criss-cross pattern to simulate a bow which will be held-in-place by the above cut pieces of tinsel wire.

With regard to the fabrication and assembly of this merchandise, the following provision provided for under subheading 9802.00.8050, Harmonized Tariff Schedule of the United States, should be noted:

> Articles assembled abroad in whole or in part of fabricated components, the product of the United States, which (a) were exported in condition ready for assembly without further fabrication, (b) have not lost their physical identity in such articles by change in form, shape, or otherwise, and (c) have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process such as cleaning, lubricating, and painting.

On the basis of the samples and information provided, it appears that the aforementioned U.S. components will be exported in condition ready for assembly without the need for further fabrication and consequently, allowances can be made under the above-stated provision, for these U.S. components, upon compliance with the applicable Customs Regulations.

The applicable subheading for the Christmas type "Veltex BOWS" (T–1801) will be 9505.10.2500, Harmonized Tariff Schedule of the United States (HTS), which provides for articles for Christmas festivities * * * other Christmas ornaments. The rate of duty will be 5 percent ad valorem [assessed against the full value of the imported article, less the cost or value of such products of the United States based upon the above provision of 9802.00.8050].

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, N.Y., July 31, 1989.

CLA–2–95:S:N:N3G:343 843277
Category: Classification
Tariff No. 9505.10.2500 and 9801.00.1035

MR. JOHN A. SLAGLE
WOLF D. BARTH CO. INC.
CUSTOMS BROKERS
7575 Holstein Avenue
Philadelphia, PA 19153

Re: The tariff classification of Christmas type tie-on bows from Haiti.

DEAR MR. SLAGLE:

In your letter dated July 5, 1989, on behalf of Berwick Industries, Inc., you requested a tariff classification ruling.

The submitted samples are small textile Christmas type tie-on bows which consist of the following: pattern T18798 (available in Mauve and French Blue Veltex) which is composed of 100 percent polypropylene ribbon with acrylic flocking; patterns T1905 (Peach), T0309 (Celadon), T19935 (Eggshell and Lace) and T19965 (French Blue Moire, Provencal Slate, or Micro Dot Slate) which are composed of ribbons of 50 percent polyester and 50 percent cotton. Each tie-on bow is hand-tied at its midsection with a metallic textile covered wire-based tinsel.

You have stated that the ribbons and tinsel wires are of U.S. origin and are imported into Haiti (in continuous form) to be cut to length. Thereafter, the ribbon lengths will be folded in a criss-cross pattern to simulate a bow, noting all to be held-in-place by the above cut pieces of tinsel wire.

The above-stated articles will be mounted on cardboard backing and sealed with a polybag (noting these packing components to be of U.S. origin). The cardboard backings will be imported into the United States in the same condition as exported while the polybags will be exported to Haiti as premade bags on rolls with demarcation lines so as to be easily separated from the roll. The merchandise mounted on the cardboard backing is inserted into the polybag which will then be heat sealed for export to the United States.

It is to be noted that all the aforementioned items will be marketed and sold at retail as Christmas tree ornaments and decorations (noting also that this merchandise is part of your 1989 "Trim Time" line).

With regard to the fabrication and assembly of this merchandise (the ribbons and tinsel wires), the following provision provided for under subheading 9802.00.8050, harmonized Tariff Schedule of the United States, should be noted:

> Articles assembled abroad in whole or in part of fabricated components, the product of the united States, which (a) were exported in condition ready for assembly without further fabrication, (b) have not lost their physical identity in such articles by change in form, shape, or otherwise, and (c) have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process such as cleaning, lubricating, and painting.

With respect to the U.S. packing components shipped to Haiti for the assembled goods, the following provision provided for under subheading 9801.00.1035, Harmonized Tariff Schedule of the United States (HTS), should be noted:

> Products of the United States when returned after having been exported, without having been advanced in value or improved in condition by any process of manufacture or other means while abroad.

On the basis of the samples and information provided, it appears that the U.S. components making-up the bows will be exported in condition ready for assembly without the need for further fabrication and that the U.S. packing components will be returned without being advanced in value or improved in condition. Therefore, allowances can be made under the above-stated provisions, for these U.S. components, upon compliance with the applicable Customs Regulations.

The applicable subheading for the Christmas type tie-on bows will be 9505.10.2500, harmonized Tariff Schedule of the United States (HTS), which provides for articles for Christmas festivities * * * Christmas ornaments, other, other. The rate of duty will be 5 percent ad valorem [assessed against the full value of the imported article, less the cost or value of such products of the United States based upon the above provision of 9802.00.8050]. Further, the pertinent subheading for the U.S. packing components will be 9801.00.1035, HTS, which provides for U.S. products, exported and returned, without being advanced in value or improved in condition * * * other and entitled to duty-free treatment.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time his merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, D.C., October 15, 1991.

CLA–2 CO:R:C:F 089892 LPF
Category: Classification
Tariff No. 6307.90.9490

MS. LORI ALDIGNER
IMPORT COORDINATOR
RITE AID CORPORATION
P.O. Box 3165
Harrisburg, PA 17105

Re: Flocked Bow – Made up (textile) article under heading 6307, HTSUSA.

DEAR MS. ALDINGER:

This is in response to your letter of June 12, 1991 submitted on behalf of Rite Aid Corporation regarding the proper classification of a flocked red bow, style #91881, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). You submitted a sample with your request for a binding ruling.

Facts:

The flocked bow measures approximately six inches by nine inches. It is made from ribbon, approximately two inches in width, and held together at a center knot by a gold, metallic covered tie. The tie, which is formed from a length of thin wire, also attaches the bow to the article being decorated. The importer plans to package the bow in a polyethylene bag with insert and header cards and plans to label the article "Christmas Flocked Bows."

Issue:

Whether the flocked bow is classified as a festive article under heading 9505, HTSUSA, or rather as other made up (textile) articles under heading 6307, HTSUSA.

Law and Analysis:

The General Rules of Interpretation (GRI's) taken in their appropriate order provide a framework for classification of merchandise under the HTSUSA. GRI 1 provides that one classifies an item by the terms of the headings and any relative section or chapter notes.

Heading 9505, HTSUSA, pertains in part, to "festive, carnival or other entertainment articles." The Explanatory Notes represent the official interpretation of the tariff at the international level and offer guidance in understanding the scope of the headings. The Explanatory Note to heading 9505, HTSUSA, indicates that this heading covers:

> (A) Festive, carnival or other entertainment articles, which in view of their intended use are generally made of nondurable material. They include:
>
> (1) Decorations such as festoons, garlands, Chinese lanterns, etc., as well as various decorative articles made of paper, metal foil, glass fibre, etc. for Christmas trees (e.g., tinsel, stars, icicles), artificial snow, coloured balls, bells, lanterns, etc. Cake and other decorations (e.g., animals, flags) which are traditionally associated with a particular festival are also classified here.
>
> (2) Articles traditionally used at Christmas festivities, e.g., Christmas trees (these are sometimes of the folding type), nativity scenes, Christmas crackers, Christmas stockings, imitation yule logs * * *.

As the Explanatory Notes suggest, several criteria indicate whether the flocked bow is classifiable as a festive article under heading 9505, HTSUSA. First, the bow is decorative and it serves no other function than decoration. (HRL'S 089320, 086768). Besides adornment the red, felt bow with its gold, metallic covered tie serves an aesthetic rather than a utilitarian purpose.

However, the flocked bow is not a traditional Christmas decoration. The bow, although of a traditional Christmas color, is not customarily associated with just the Christmas festival.

Furthermore, it follows that one would not necessarily use the flocked bow in connection with the festive Christmas holiday. Since 9505, HTSUSA, is a use provision, one must review the Additional U.S. Rules of Interpretation which provide:

In the absence of special language or context which otherwise requires –

(a) a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use; * * *

Simply stated, one can use the flocked bow not only during the Christmas season, but also throughout the entire year. The bow has a wide variety of motifs: for Valentine's Day, gift-packages, or even as a clothing accessory, to list a few. For the above reasons, the bow is not properly classified under heading 9505, HTSUSA. Consequently, we must classify the flocked bow elsewhere.

The bow is made from flocked ribbon. Flock is defined as, "very short or pulverized fiber used esp. to form a velvety pattern on cloth or paper or a protective covering on metal." *See Webster's Ninth New Collegiate Dictionary* 474 (1990). After examination of the bow, the Customs Laboratory confirmed that the flock and ribbon were both composed of textile fabric of man-made fibers. In light of this assessment, we must draw our attention to heading 6307, HTSUSA, which provides for other made up (textile) articles. The Explanatory Notes to Chapter 63, Other Made Up Textile Articles, provide, in general, that the chapter includes:

(1) Under headings 63.01 to 63.07 (sub-Chapter I) made up textile articles of any textile fabric (woven or knitted fabric, felt, nonwovens, etc.) which are *not* more specifically described in other Chapters of Section XI or elsewhere in the Nomenclature * * *.

The flocked bow is not more specifically described elsewhere in the Nomenclature.

In addition, the above Explanatory Note refers to Note 7 to Section XI, Textiles and Textile Articles, which provides, in pertinent part:

For purposes of this Section, the expression "made up" means:

(a) Cut otherwise than into squares or rectangles;

(b) Produced in the finished state, ready for use (or merely needing separation by cutting dividing threads) without sewing or other working (for example, certain dusters, towels, table cloths, scarf squares, blankets); * * *

(d) Cut to size and having undergone a process of drawn thread work;

(e) Assembled by sewing, gumming or otherwise (other than piece goods consisting of two or more lengths of identical material joined end to end and piece goods composed of two or more textiles assembled in layers, whether or not padded); * * *

The importer does not provide us with details regarding the procedure used to assemble and produce the bow. However, it is apparent by its shape and design that the bow is not merely cut into squares or rectangles and is likely assembled by sewing, gumming or another manner which would qualify the bow as "made up." Now we can turn our focus to the appropriate subheading for the flocked bow, 6307.90.9490, HTSUSA, which provides for other made up (textile) articles * * * other, other, other.

Holding:

The flocked bow is properly classified under subheading 6307.90.9490., HTSUSA, which provides for other made up (textile) articles * * * other: other: other. The applicable rate of duty is 7 percent *ad valorem*.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, D.C.

CLA–2 CO:R:C:F 952969
Category: Classification
Tariff No. 3926.40.0000

MS. JUDY KEARNEY
NETWORK BROKERS INTERNATIONAL, INC.
LICENSED CUSTOMS BROKERS
Airport Industrial Office Park, Building A2–C
145th Avenue and Hook Creek Blvd.
Valley Stream, NY 11581

Re: Classification of veltex bows; Revocation of NYRL 835867; Heading 3926, HTSUSA, articles of plastics, statuettes and other ornamental articles; Not 9505, festive articles; HRLs 953177, 954903.

DEAR MS. KEARNEY:

In New York Ruling Letter (NYRL) 835867, issued February 3, 1989, veltex bows imported from China were classified under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). We have reviewed that ruling and have found it to be in error. This ruling also is in response to your request recently submitted on behalf of Berwick Industries regarding the proper classification of the bows in light of the fact that the display card accompanying the bows has been modified. Samples of the merchandise were submitted. The correct classification is as follows.

Facts:

The merchandise at issue is veltex bows (Item #T–1801). They are described as Christmas type bows composed of polypropylene ribbons with acrylic flocking. Each bow is hand tied at its midsection by a gold colored metallic braid with a core of textile yarn containing a single wire to impart stiffness. The card accompanying the bows states that they are designed for multipurpose indoor and outdoor use with trees, mailboxes, windows, wreaths, baskets, gifts, etc.

Issue:

Whether the bows are classified in 9505 as festive articles, 3926 as other articles of plastics, or elsewhere in the HTSUSA.

Law and Analysis:

The General Rules of Interpretation (GRIs) taken in their appropriate order provide a framework for classification of merchandise under the HTSUSA. Most imported goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRIs.

Heading 9505 provides for, *inter alia*, festive, carnival and other entertainment articles. The ENs to 9505 indicate that the heading covers:

> (A) Festive, carnival or other entertainment articles, which in view of their intended use are generally made of non-durable material. They include:
>
> (1) Decorations such as festoons, garlands, Chinese lanterns, etc., as well as various decorative articles made of paper, metal foil, glass fibre, etc., for Christmas trees (e.g., tinsel, stars, icicles), artificial snow, coloured balls, bells, lanterns, etc. Cake and other decorations (e.g., animals, flags) which are traditionally associated with a particular festival are also classified here.

(2) Articles traditionally used at Christmas festivities, e.g., artificial Christmas trees (these are sometimes of the folding type), nativity scenes, Christmas crackers, Christmas stockings, imitation yule logs * * *.

* * * * * * *

In general, merchandise is classifiable in heading 9505, HTSUSA, as a *festive article* when the article, *as a whole:*

1. is of non-durable material or, generally, is not purchased because of its extreme worth, or intrinsic value (e.g., paper, cardboard, metal foil, glass fiber, plastic, wood);
2. functions primarily as a decoration (e.g., its primary function is not utilitarian); and
3. is traditionally associated or used with a particular festival (e.g., stockings and tree ornaments for Christmas, decorative eggs for Easter).

An article's satisfaction of these three criteria is indicative of classification as a festive article. The motif of an article is not dispositive of its classification and, consequently, does not transform an item into a festive article.

Customs will consider the bows to be made of non-durable material since they are not designed for sustained wear and tear, nor are purchased because of their extreme worth or value. In addition, the articles' primary function is decorative, as opposed to, utilitarian.

However, when examining the bows, in their entirety, it is evident that they are not traditionally associated or used with the particular festival of Christmas. Because of their divergent functions throughout the year as a decoration for the home, for gifts, etc., the bows are not traditionally associated or used with the particular festival of Christmas. Regardless of the addition of the card describing the bows' divergent uses, they are not *ejusdem generis* with those articles cited in the ENs to 9505, as exemplars of traditional, festive articles. They must be classified elsewhere.

The classification of plastics and textile combinations is governed by the legal notes to the HTSUSA. Specifically, the ENs to Chapter 39 indicate, in pertinent part, that:

> [T]he classification of plastics and textile combinations is essentially governed by Note 1(h) to Section XI, Note 3 to Chapter 56 and Note 2 to Chapter 59.

However, because the flocking portion of the bows neither qualifies as "nonwovens" or as "textile fabric" as referred to within these Section and Chapter Notes, the notes are not indicative of classification in this case. *See* Headquarters Ruling Letter (HRL) 953177, issued April 7, 1993, explaining that flock is not considered to be a fabric within the scope of Section XI.

Since a review of the appropriate headings, legal notes, and ENs indicates that no HTSUSA provision provides for the bows, in their entirety, they are not classifiable at the GRI 1 level. Thus, we turn to GRI 3(a) to classify the article in the HTSUSA heading providing for one of its components: either the polypropylene ribbon or acrylic flocking.

GRI 3(a) explains, in pertinent part, that goods which are classifiable under two or more headings are classified under the heading which provides the most specific description of the goods. However, all such headings are regarded as equally specific when each refers to only part of the goods. Each of the possible headings, in this case, refers to only part of the good. Since the headings are, thus, regarded as equally specific, we do not classify the article by GRI 3(a) but rather by GRI 3(b).

GRI 3(b) provides that articles made up of different components, that is, composite goods, shall be classified as if they consisted of the component which gives them their essential character. "Essential character" is the attribute which strongly marks or serves to distinguish what an article is. EN VIII to GRI 3(b) explains that bulk, quantity, weight, value or the role of a constituent material in relation to the use of the article are indicia of essential character.

It is our position that the polypropylene ribbon imparts the essential character of the article. It distinguishes the article as a bow, providing it with its form and allowing it to function as such. The flocking merely enhances the appearance of the ribbon.

Heading 3926 provides for other articles of plastics or materials of headings 3901 to 3914. Insofar as the bows are decorative and designed to adorn gifts and other similar articles, they are appropriately described by the terms of subheading 3926.40 as ornamental articles. *See* HRL 954903, issued September 13, 1993.

Holding:

The veltex bows are classifiable in subheading 3926.40.00, HTSUSA, as "Other articles of plastics and articles of other materials of headings 3901 to 3914: Statuettes and other ornamental articles." The applicable rate of duty is 5.3 percent *ad valorem.*

NYRL 835867 hereby is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT E]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, D.C.

CLA–2 CO:R:C:F 955586
Category: Classification
Tariff No. 3926.40.0000 and 5806.32.1090

MS. JUDY KEARNEY
NETWORK BROKERS INTERNATIONAL, INC.
LICENSED CUSTOMS BROKERS
Airport Industrial Office Park, Building A2–C
145th Avenue and Hook Creek Blvd.
Valley Stream, NY 11581

Re: Classification of plastic and textile bows; Revocation of NYRL 843277; Heading 3926, HTSUSA, articles of plastics, statuettes and other ornamental articles; Heading 5806 narrow woven fabrics; Not 9505, festive articles; HRLs 953177, 954903.

DEAR MS. KEARNEY:

In New York Ruling Letter (NYRL) 843277, issued July 31, 1989, tie-on bows imported from Haiti were classified under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). We have reviewed that ruling, issued on behalf of Berwick Industries, and have found it to be in error. The correct classification is as follows.

Facts:

The merchandise at issue is a veltex bow (pattern T18798) composed of 100 percent polypropylene ribbon with acrylic flocking and textile bows (patterns T1905, T0309, T19935, and T19965) composed of 50 percent polyester and 50 percent cotton ribbons. Each tie-on bow is hand-tied at its midsection with a metallic textile covered wire-based tinsel.

Issue:

Whether the bows are classified in 9505 as festive articles, 3926 as other articles of plastics, or 5806 as narrow woven fabrics.

Law and Analysis:

The General Rules of Interpretation (GRIs) taken in their appropriate order provide a framework for classification of merchandise under the HTSUSA. Most imported goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRIs.

Heading 9505 provides for, *inter alia,* festive, carnival and other entertainment articles. The ENs to 9505 indicate that the heading covers:

> (A) Festive, carnival or other entertainment articles, which in view of their intended use are generally made of non-durable material. They include:
>
> (1) Decorations such as festoons, garlands, Chinese lanterns, etc., as well as various decorative articles made of paper, metal foil, glass fibre, etc., for

> Christmas trees (e.g., tinsel, stars, icicles), artificial snow, coloured balls, bells, lanterns, etc. Cake and other decorations (e.g., animals, flags) which are traditionally associated with a particular festival are also classified here.
>
> (2) Articles traditionally used at Christmas festivities, e.g., artificial Christmas trees (these are sometimes of the folding type), nativity scenes, Christmas crackers, Christmas stockings, imitation yule logs * * *.
>
> * * * * * * *

In general, merchandise is classifiable in heading 9505, HTSUSA, as a *festive article* when the article, *as a whole:*

1. is of non-durable material or, generally, is not purchased because of its extreme worth, or intrinsic value (e.g., paper, cardboard, metal foil, glass fiber, plastic, wood);
2. functions primarily as a decoration (e.g., its primary function is not utilitarian); and
3. is traditionally associated or used with a particular festival (e.g., stockings and tree ornaments for Christmas, decorative eggs for Easter).

An article's satisfaction of these three criteria is indicative of classification as a festive article. The motif of an article is not dispositive of its classification and, consequently, does not transform an item into a festive article.

Customs will consider the bows to be made of non-durable material since they are not designed for sustained wear and tear, nor are purchased because of their extreme worth or value. In addition, the articles' primary function is decorative, as opposed to, utilitarian.

However, when examining the bows, in their entirety, it is evident that they are not traditionally associated or used with the particular festival of Christmas. Because of their divergent functions throughout the year as, for example, home decoration (for furniture, curtains, lamps, window shades), apparel (for hats, blouses, etc.), and gift wrapping, the bows are not traditionally associated or used with the particular festival of Christmas. They are not *ejusdem generis* with those articles cited in the ENs to 9505, as exemplars of traditional, festive articles. The bows must be classified elsewhere.

Heading 5806 provides for narrow woven fabrics. The ENs to 5806 indicate that the heading includes, *inter alia*, ribbons of man-made fibers which may be used "in women's apparel, in the manufacture of hats and fancy collars, as medal ribbons, as a decorative binding material, in furnishing, etc." The bows composed of textile fabrics are classifiable within heading 5806. At the subheading level, 5806.31 provides for other narrow woven fabrics composed of cotton, while 5806.32 provides for other narrow woven fabrics composed of man-made fibers, for instance, polyester. As it is our understanding that neither the cotton nor polyester predominates by weight, the articles are classified within subheading 5806.32, the provision which occurs last in numerical order. *See* Note 2 to Section XI, HTSUSA. The appropriate subheading at the ten-digit level is 5806.32.1090.

As for the veltex bow, composed of polypropylene ribbon and acrylic flocking, we note that the classification of plastics and textile combinations is governed by the legal notes to the HTSUSA. Specifically, the ENs to Chapter 39 indicate, in pertinent part, that:

> [T]he classification of plastics and textile combinations is essentially governed by Note 1(h) to Section XI, Note 3 to Chapter 56 and Note 2 to Chapter 59.

However, because the flocking portion of the bow neither qualifies as "nonwovens" or as "textile fabric" as referred to within these Section and Chapter Notes, the notes are not indicative of classification in this case. *See* Headquarters Ruling Letter (HRL) 953177, issued April 7, 1993, explaining that flock is not considered to be a fabric within the scope of Section XI.

Since a review of the appropriate headings, legal notes, and ENs indicates that no HTSUSA provision provides for the veltex bow, in its entirety, it is not classifiable at the GRI 1 level. Thus, we turn to GRI 3(a) to classify the article in the HTSUSA heading providing for one of its components: either the polypropylene ribbon or acrylic flocking.

GRI 3(a) explains, in pertinent part, that goods which are classifiable under two or more headings are classified under the heading which provides the most specific description of the goods. However, all such headings are regarded as equally specific when each refers to only part of the goods. Each of the possible headings, in this case, refers to only part of the good. Since the headings are, thus, regarded as equally specific, we do not classify the article by GRI 3(a) but rather by GRI 3(b).

GRI 3(b) provides that articles made up of different components, that is, composite goods, shall be classified as if they consisted of the component which gives them their es-

sential character. "Essential character" is the attribute which strongly marks or serves to distinguish what an article is. EN VIII to GRI 3(b) explains that bulk, quantity, weight, value or the role of a constituent material in relation to the use of the article are indicia of essential character.

It is our position that the polypropylene ribbon imparts the essential character of the article. It distinguishes the article as a bow, providing it with its form and allowing it to function as such. The flocking merely enhances the appearance of the ribbon.

Heading 3926 provides for other articles of plastics or materials of headings 3901 to 3914. Insofar as the bow is decorative and designed to adorn gifts and other similar articles, it is appropriately described by the terms of subheading 3926.40 as an ornamental article. *See* HRL 954903, issued September 13, 1993.

Holding:

The veltex bow is classifiable in subheading 3926.40.00, HTSUSA, as "Other articles of plastics and articles of other materials of headings 3901 to 3914: Statuettes and other ornamental articles." The applicable rate of duty is 5.3 percent *ad valorem.*

The textile bows are classifiable in subheading 5806.32.1090, HTSUSA, as "Narrow woven fabrics, * * * Other woven fabrics: Of man-made fibers: Ribbons, Other." The applicable rate of duty is 9 percent *ad valorem.*

Articles classifiable in subheading 5806.32.1090, HTSUSA, fall within the textile category designation 229, which may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent negotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, the *Status Report on Current Import Quotas (Restraint Levels),* an issuance of the U.S. Customs Service, which is updated weekly and is available at your local Customs office.

NYRL 843277 hereby is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT F]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, D.C.

CLA–2 CO:R:C:F 955587
Category: Classification
Tariff No. 3926.40.0000

MS. LORI ALDINGER
IMPORT COORDINATOR
RITE AID CORPORATION
P.O. Box 3165
Harrisburg, PA 17105

Re: Classification of plastic bow with flocking; Revocation of HRL 089892; Heading 3926, HTSUSA, articles of plastics, statuettes and other ornamental articles; Not 6307, other made up (textile) articles; Not 9505, festive articles; HRLs 953177, 954903.

DEAR MS. ALDINGER:

In Headquarters Ruling Letter (HRL) 089892, issued October 15, 1991, a flocked bow was classified under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). We have reviewed that ruling and have found it to be in error. The correct classification is as follows.

Facts:

The merchandise at issue is a flocked bow (style #91881) composed of plastic ribbon with flocking. It is held together at a center knot by a metallic covered wire tie which also serves to attach the bow to the article being decorated.

Issue:

Whether the bow is classified in 3926 as other articles of plastics, 6307 as other made up textile articles, or 9505 as festive articles.

Law and Analysis:

The General Rules of Interpretation (GRIs) taken in their appropriate order provide a framework for classification of merchandise under the HTSUSA. Most imported goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRIs.

Heading 9505 provides for, *inter alia*, festive, carnival and other entertainment articles. The ENs to 9505 indicate that the heading covers:

> (A) Festive, carnival or other entertainment articles, which in view of their intended use are generally made of non-durable material. They include:
>
> (1) Decorations such as festoons, garlands, Chinese lanterns, etc., as well as various decorative articles made of paper, metal foil, glass fibre, etc., for Christmas trees (e.g., tinsel, stars, icicles), artificial snow, coloured balls, bells, lanterns, etc. Cake and other decorations (e.g., animals, flags) which are traditionally associated with a particular festival are also classified here.
>
> (2) Articles traditionally used at Christmas festivities, e.g., artificial Christmas trees (these are sometimes of the folding type), nativity scenes, Christmas crackers, Christmas stockings, imitation yule logs * * *.
>
> * * * * * * *

In general, merchandise is classifiable in heading 9505, HTSUSA, as a *festive article* when the article, *as a whole:*

1. is of non-durable material or, generally, is not purchased because of its extreme worth, or intrinsic value (e.g., paper, cardboard, metal foil, glass fiber, plastic, wood);
2. functions primarily as a decoration (e.g., its primary function is not utilitarian); and
3. is traditionally associated or used with a particular festival (e.g., stockings and tree ornaments for Christmas, decorative eggs for Easter).

An article's satisfaction of these three criteria is indicative of classification as a festive article. The motif of an article is not dispositive of its classification and, consequently, does not transform an item into a festive article.

Customs considers the bow to be made of non-durable material since it is not designed for sustained wear and tear, nor is purchased because of its extreme worth or value. In addition, the article's primary function is decorative, as opposed to, utilitarian.

However, when examining the bow, in its entirety, it is evident that it is not traditionally associated or used with the particular festival of Christmas. Because of its divergent functions throughout the year as, for example, home decoration and gift wrapping, the bow is not traditionally associated or used with the particular festival of Christmas. It is not *ejusdem generis* with those articles cited in the ENs to 9505, as exemplars of traditional, festive articles. The bow must be classified elsewhere.

The classification of articles composed of plastics and textile combinations, such as the bow, is governed by the legal notes to the HTSUSA. Specifically, the ENs to Chapter 39 indicate, in pertinent part, that:

> [T]he classification of plastics and textile combinations is essentially governed by Note 1(h) to Section XI, Note 3 to Chapter 56 and Note 2 to Chapter 59.

However, because the flocking portion of the bow neither qualifies as "nonwovens" or as "textile fabric" as referred to within these Section and Chapter Notes, the notes are not indicative of classification in this case. *See* Headquarters Ruling Letter (HRL) 953177, issued April 7, 1993, explaining that flock is not considered to be a fabric within the scope of Section XI.

Since a review of the appropriate headings, legal notes, and ENs indicates that no HTSUSA provision provides for the bow, in its entirety, it is not classifiable at the GRI 1

level. Thus, we turn to GRI 3(a) to classify the article in the HTSUSA heading providing for one of its components: either the plastic ribbon or flocking.

GRI 3(a) explains, in pertinent part, that goods which are classifiable under two or more headings are classified under the heading which provides the most specific description of the goods. However, all such headings are regarded as equally specific when each refers to only part of the goods. Each of the possible headings, in this case, refers to only part of the good. Since the headings are, thus, regarded as equally specific, we do not classify the article by GRI 3(a) but rather by GRI 3(b).

GRI 3(b) provides that articles made up of different components, that is, composite goods, shall be classified as if they consisted of the component which gives them their essential character. "Essential character" is the attribute which strongly marks or serves to distinguish what an article is. EN VIII to GRI 3(b) explains that bulk, quantity, weight, value or the role of a constituent material in relation to the use of the article are indicia of essential character.

It is our position that the plastic ribbon imparts the essential character of the article. It distinguishes the article as a bow, providing it with its form and allowing it to function as such. The flocking merely enhances the appearance of the ribbon.

Heading 3926 provides for other articles of plastics or materials of headings 3901 to 3914. Insofar as the bow is decorative and designed to adorn gifts and other similar articles, it is appropriately described by the terms of subheading 3926.40 as an ornamental article. *See* HRL 954903, issued September 13, 1993.

Holding:

The plastic bow is classifiable in subheading 3926.40.00, HTSUSA, as "Other articles of plastics and articles of other materials of headings 3901 to 3914: Statuettes and other ornamental articles." The applicable rate of duty is 5.3 percent *ad valorem*.

HRL 089892 hereby is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF CUSTOMS RULING LETTER RELATING TO TARIFF CLASSIFICATION OF LASER BEAM PRINTER

ACTION: Notice of proposed revocation of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1) of the Customs Modernization Act (Pub. L. 103–182), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of a laser beam printer. Comments are invited on the correctness of the proposed ruling.

DATE: Comments must be received on or before March 11, 1994.

ADDRESS: Written comments are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Metals and Machinery Classification Branch, 1301 Constitution Avenue, N.W., (Franklin Court), Washington, D.C., 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, located at Franklin Court, 1099 14th St., N.W., Suite 4000, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Kathleen Clarke, Metals and Machinery Classification Branch 202-482-7030.

SUPPLEMENTARY INFORMATION:

BACKGROUND

In New York Ruling Letter 869784, issued December 24, 1991, by the Area Director of Customs, New York Seaport, Copal Laser Beam Printer Models SLB 6000 and SLB 6009 were classified under subheading 8442.40.00, Harmonized Tariff Schedule of the United States (HTSUS), which provides for parts of other machinery, apparatus and equipment for type-founding or typesetting. The ruling letter is set forth in Attachment A to this document. Customs Headquarters is of the opinion that since the printers are used in the high end of the desktop publishing field for production of in-house products and have a resolution of 600 dots per inch ("dpi"), they are not classifiable under subheading 8442.40.00, HTSUS. This ruling is in conflict with NY 862408 dated April 19, 1991, which classified similar printers under subheading 8471.92.70, HTSUS, as other printer units. As of January 1, 1994, subheading 8471.92.70, HTSUS, has been superseded by subheadings 8471.92.54 and 8471.92.56, HTSUS, which provide for other laser printer units, depending upon the pages per minute printing speed.

Customs intends to revoke NY 869784 to reflect the proper classification of the subject articles under subheadings 8471.92.54 or 8471.92.56, HTSUS, which provide for other laser printer units, depending upon the pages per minute printing speed. Before taking this action, consideration will be given to any written comments timely received. The proposed ruling revoking NY 869784 is set forth in Attachment B to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: January 12, 1994.

WILLIAM G. ROSOFF,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, N.Y., December 24, 1991.

CLA–2–84:S:N:N1:105 869784
Category: Classification
Tariff No. 8442.40.0000

MS. LISA L. CORTES
NIPPON EXPRESS USA INC.
20444 S. Reeves Avenue
Long Beach, CA 90810

Re: The tariff classification of a laser beam printer from Japan.

DEAR MS. CORTES:

In your letters dated November 15 and December 4, 1991 on behalf of Marubeni Intl Electronics you requested a tariff classification ruling.

The Copal Laser Beam Printer Models SLB 6000 and SLB 6009 are used in electronic publishing as the output printers of newspaper front-end systems that prepare print copy so that printing plates can subsequently be produced therefrom. They typeset the copy onto plain paper. Printing the copy on the plain paper is done by semi-conductor laser with electrophotography. The printer is driven by a controller based on a RISC computer with Postscript or ACE type fonts. The Copal printers will be imported without controllers.

While its technology is like that found in laser printers used as output devices of computers, its resolution of 600 dpi is double that of the output printers. It is clear that the principal function of laser beam printers of this resolution is in preparing typeset copy for printing.

The applicable subheading for the Copal Laser Beam Printer Models SLB Models 6000 and 6009 will be 8442.40.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for parts of other machinery, apparatus and equipment for type-founding or typesetting. This provision is duty-free.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, D.C.

CLA–2 CO:R:C:M 951222 KCC
Category: Classification
Tariff No.: 8471.92.54; 8471.92.56

MS. LISA L. CORTES
NIPPON EXPRESS USA INC.
20444 S. Reeves Avenue
Long Beach, California 90810

Re: NY 869784 revoked; Copal Laser Beam Printer Models SLB 6000 and SLB 6009; 8442.40.00; NY 862408; Note 5, Chapter 84; principal use; Additional U.S. Rule of Interpretation 1(a).

DEAR MS. CORTES:

This is in reference to New York Ruling (NY) 869784 issued to you on December 24, 1991, on behalf of Marubeni International Electronics, which concerned the tariff classifi-

cation of Copal Laser Beam Printers under the Harmonized Tariff Schedule of the United States (HTSUS).

Facts:

The Copal Laser Beam Printer Models SLB 6000 and SLB 6009 ("printers") at issue in NY 869784 were described as being "* * * used in electronic publishing as the output printers of newspaper front-end systems that prepare print copy so that printing plates can subsequently be produced therefrom." The printers copy onto plain paper by using semi-conductor lasers with electrophotography. The printers were imported without control units.

In NY 869784, the Area Director, New York Seaport, held that the printers were classified under subheading 8442.40.00, HTSUS, which provides for parts of other machinery, apparatus and equipment for type-founding or typesetting. This classification was based on the premise that the printers at issue had resolutions of 600 dots per inch ("dpi"). NY 869784 stated that 600 dpi was double that of standard output printers. Based on the printers resolution, NY 869784 stated "* * * that the principal function of laser beam printers of this resolution is in preparing typeset copy for printing."

NY 869784 did not take into consideration NY 862408 dated April 19, 1991, in which nine laser beam printers with 600 dpi resolution were classified under subheading 8471.92.70, HTSUS, as other printers. As of January 1, 1994, subheading 8471.92.70, HTSUS, has been superseded by subheadings 8471.92.54 and 8471.92.56, HTSUS. The printers in NY 862408 were similar to the printers in NY 869784 in that they both lacked control units. Both types of printers in NY 869784 and NY 862408 are commonly known in the trade as "engines" or "imagesetters."

The competing subheadings are:

8442.40.00	Machinery, apparatus and equipment (other than the machine tools of headings 8456 to 8465), for type-founding or typesetting, for preparing or making printing blocks, plates, cylinders or other printing components; blocks, plates, cylinders and lithographic stones, prepared for printing purposes (for example, planed, grained or polished); parts thereof * * * Parts of the foregoing machinery, apparatus or equipment.
8471.92.54	Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included * * * Other * * * Input or output units, whether or not entered with the rest of a system and whether or not containing storage units in the same housing * * * Other * * * Printer Units * * * Other * * * Laser * * * Capable of producing more than 20 pages per minute.
8471.92.56	Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included * * * Other * * * Input or output units, whether or not entered with the rest of a system and whether or not containing storage units in the same housing * * * Other * * * Printer Units * * * Other * * * Laser * * * Other.

Issue:

Are the Copal Laser Beam Printers classified as parts of other machinery, apparatus and equipment for type-founding or typesetting under subheading 8442.40.00, HTSUS, or as other laser printer units under subheadings 8471.92.54 or 8471.92.56, HTSUS?

Law and Analysis:

The classification of merchandise under the HTSUS is governed by the General Rules of Interpretation (GRI's). GRI 1, HTSUS, states, in part, that "for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes * * *."

Note 5, Chapter 84, HTSUS, states that:

> Heading 8471 does not cover machines incorporating or working in conjunction with an automatic data processing machine and performing a specific function. Such machines are classified in the headings appropriate to their respective functions or, failing that, in residual headings.

Headings 8442 and 8471, HTSUS, are considered use provisions. "A tariff classification controlled by use (other than actual use) it to be determined in accordance with the use in

the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use." Additional U.S. Rule of Interpretation 1(a), HTSUS.

We need to determine the principal use of the class or kind of printers under consideration. Additionally, we need to determine where Customs draws the line between the printers of heading 8471, HTSUS, and those of heading 8442, HTSUS?

We have carefully researched and reviewed information about the printers under consideration, as well as the laser printer industry as a whole. After consideration of all the relevant facts, we are of the opinion that printers with resolutions of 900 dpi or less are classifiable under heading 8471, HTSUS, unless, the importer can prove that, in its condition as entered, the printer can perform a specific function. If it is established that the printers do perform a specific function, than pursuant to Note 5, Chapter 84, HTSUS, they are classified in the heading appropriate to their respective function.

We are aware that in the laser printer industry the resolutions or dpi of laser printers are always advancing. Therefore, in the future Customs may have to adjust its 900 dpi figure in order to reflect technological advances. Additionally, it should be noted that Customs has chosen the 900 dpi figure as a reference point for classification of this class or kind of printer. Customs will not merely look to the dpi of laser printers, but will examine all aspects of the imported merchandise. Customs will look at items such as application specific controllers, software dedicating the printers for use with a specific function, pages per minute printing speed or other special features. it is ultimately the importer's responsibility to present Customs with the necessary evidence to classify their printers pursuant to a specific function.

Therefore, based on the information submitted and NY 862408, the printers under consideration are classified under heading 8471, HTSUS. Inasmuch as the printers are imported without their control units, they are specifically classified under subheading 8471.92.54 or 8471.92.56, HTSUS, as other laser printer units, depending upon the pages per minute printing speed.

Holding:

The Copal Laser Beam Printer Models SLB 6000 and SLB 6009 are classified under subheading 8471.92.54 or 8471.92.56, HTSUS, as other laser printer units, depending upon the pages per minute printing speed, both tariff provisions are currently subject to the Column 1 General free rate of duty.

NY 869784 is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED MODIFICATION OF CUSTOMS RULING LETTER RELATING TO ELIGIBILITY OF METAL WIRE CLOTH FOR A PARTIAL DUTY EXEMPTION UNDER SUBHEADING 9802.00.60

ACTION: Notice of proposed modification of ruling letter concerning the eligibility of metal wire cloth from the United Kingdom for a partial duty exemption.

SUMMARY: Pursuant to section 625(c)(1) of the Customs Modernization Act, Public Law 103–82, 107 Stat. 437, December 8, 1993, this notice advises interested parties that Customs intends to revoke a ruling pertaining to the applicability of subheading 9802.00.60, HTSUS, to metal wire cloth from the United Kingdom. Comments are invited on the correctness of the proposed ruling.

DATE: Comments must be received on or before March 11, 1994.

ADDRESS: Written comments are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Special Classification Branch, 1301 Constitution Avenue, N.W., (Franklin Court), Washington, D.C. 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, located at Franklin Court, 1099 14th Street, N.W., Suite 4000, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Wende Schuster, Special Classification Branch (202) 482–6980.

SUPPLEMENTARY INFORMATION:

BACKGROUND

In New York Ruling Letter 888508, dated July 26, 1993, issued by the Area Director of Customs, New York Seaport, metal wire cloth from the United Kingdom was classified under subheading 7115.90.5000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "other articles of precious metal or of metal clad with precious metal: other." In addition, NYRL 888508 held that the wire cloth satisfied the requirements under subheading 9802.00.60, HTSUS, and therefore, was eligible for the partial duty exemption available under this provision. A copy of NYRL 888508 is set forth in Attachment A to this document.

Headquarters was asked by the National Import Specialist Division, New York Seaport, to reconsider the position taken in NYRL 888508, concerning the eligibility of platinum and rhodium alloy wire cloth for the partial duty exemption under subheading 9802.00.60, HTSUS, when wire is sent to the United Kingdom to be woven into cloth, and subsequently returned to the U.S. for additional processing. In addition, Headquarters also was asked to address the applicability of subheadings 9802.00.50 and 9802.00.80, HTSUS, to the subject merchandise.

Upon reconsideration of NYRL 888508, Headquarters has determined that the metal wire cloth is not eligible for the partial duty exemption under subheading 9802.00.60, HTSUS. Subheading 9802.00.60, HTSUS, specifically excludes articles made of precious metal or metal clad with precious metals, pursuant to U.S. note 3(d) of subchapter II, Chapter 98, HTSUS. Therefore, since the metal cloth consists of precious metal, it is precluded from eligibility under this provision.

Before taking this action, consideration will be given to any written comments timely received. The proposed ruling modifying the NYRL is set forth in Attachment B to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: January 11, 1994.

SANDRA L. GETHERS,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, N.Y., July 26, 1993.

CLA–2–71:S:N:N3:115 888508
Category: Classification
Tariff No. 9802.00.6000/7115.90.5000

MR. RUDY MAGDANGAL
ENGELHARD CORPORATION
700 Blair Road
Carteret, New Jersey 07008

Re: Tariff classification of a precious metal wire cloth from the United Kingdom.

DEAR MR. MAGDANGAL:

In your letter dated July 12, 1993, you requested a tariff classification ruling.

The subject item is wire cloth made of a platinum and rhodium alloy produced in the United States which is being sent to the United Kingdom for weaving. Upon returning to the United States, it will be cut, welded, and made into an activated catalyst which will be treated with a platinum-containing salt and fabricated into multi-layer units.

You indicate that you would register the merchandise prior to export to the U.K. and when it is returned, enter the merchandise in 9802 HTS.

Subheading 9802.00.6000 provides that any article of metal * * * manufactured in the United states or subjected to a process of manufacture in the United States, if exported for further processing, and if the exported article as processed outside the United States, or the article which results from the processing outside the United States, is returned to the united States for further processing may be entered with duty upon the value of such processing outside the United States upon compliance with Customs Regulations.

In order to meet the requirements of "further processing," some operations must be applied to the metal articles that will change their shape or form or impart new and different properties which become an integral part of the metal itself.

In this instance, the U.S. made materials sent to the U.K., the weaving performed there and the cutting operation upon its return to U.S. satisfy these requirements.

The applicable subheading for the wire cloth will be 9802.00.6000/7115.90.5000. Harmonized Tariff Schedule of the United States (HTS), which provided for other articles of precious metal or of metal clad with precious metal: other. The duty rate will be 8% ad valorem. it will be applied only to the value of such processing as discussed earlier.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. if the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, D.C.

CLA–2 CO:R:C:S 557525 WAS
Category: Classification
Tariff No. 9802.00.50, 9802.00.60, and 9802.00.80

MR. RUDY MAGDANGAL
ENGELHARD CORPORATION
700 Blair Road
Carteret, N.J. 07008

Re: Reconsideration of NYRL 888508; eligibility of metal wire cloth from the United Kingdom for a partial duty exemption.

DEAR MR. MAGDANGAL:

This is in response to your letter dated August 3, 1993, requesting clarification of New York Ruling Letter (NYRL) 888508 dated July 26, 1993, concerning the eligibility of wire cloth made of a platinum and rhodium alloy for a partial. duty exemption under subheading 9802.00.60, Harmonized Tariff Schedule of the United Atates (HTSUS).

Facts:

The subject article is wire cloth made of platinum and rhodium alloy wire produced in the U.S. which is sent to the United Kingdom for a weaving operation. Upon return, to the U.S., the wire cloth will be cut, welded, and made into an activated catalyst which will be treated with a platinum-containing salt and made into multi-layer units.

In NYRL 888508, Customs held that the applicable tariff classification of the wire cloth was under subheading 7115.90.50, HTSUS, and eligible for the partial duty exemption under subheading 9802.00.60, HTSUS. However, you have since been advised by Customs in New York that subheading 9802.00.60, HTSUS, is inapplicable to articles of precious metal. You ask if the returned cloth would be entitled to a partial duty exemption under either subheading 9802.00.50 or 9802.00.80, HTSUS.

Issue:

Whether the wire cloth described above qualifies for the partial duty exemption available under subheading 9802.00.50, 9802.00.60, or 9802.00.80, HTSUS, when returned to the U.S.

Law and Analysis:

Subheading 9802.00.50, HTSUS, provides a partial duty exemption for articles returned to the U.S. after having been exported to be advanced in value or improved in condition by means of repairs or alterations. Such articles are dutiable only upon the value of the foreign repairs or alterations, provided the documentary requirements of section 10.8, Customs Regulations (19 CFR 10.8), are satisfied. However, entitlement to this tariff treatment is precluded in circumstances where the operations performed abroad destroy the identity of the articles or create new or commercially different articles. *See A.F. Burstrom v. United States*, 44 CCPA 27, C.A.D. 631 (1956); *Guardian Industries Corp. v. United States*, 3 CIT 9 (1982). Tariff treatment under subheading 9802.00.50, HTSUS, is also precluded where the exported articles are incomplete for their intended use prior to the foreign processing. *Guardian; Dolliff & Company, Inc. v. United States*, 81 Cust. Ct. 1, C.D. 82, 599 F.2d 1015, 119 (1979).

In applying the above criteria to this case, we conclude that the exported component – wire – is not a "completed article" since it is clearly unsuitable for, and, in fact, incapable of its intended use in the United States as various types of multilayer units. In fact, upon return to the U.S., the wire cloth will be cut, welded, and made into an activated catalyst. Accordingly, the wire cloth is not eligible for the partial duty exemption under subheading 9802.00.50, HTSUS, when returned to the U.S.

Regarding subheading 9802.00.60, HTSUS, this tariff provision provides a partial duty exemption for:

> [a]ny article of metal (as defined in U.S. note 3(d) of this subchapter) manufactured in the United States or subjected to a process of manufacture in the United States, if exported for further processing, and if the exported article as processed outside the United States, or the article which results from the processing outside the United States, is returned to the United States for further processing.

This tariff provision imposes a dual "further processing" requirement on eligible U.S. articles of metal; one foreign, and when returned, one domestic. Metal articles satisfying these statutory requirements may be classified under this tariff provision with duty only on the value of such processing performed outside the U.S., provided the documentary requirements of section 10.9, Customs Regulations (19 CFR 10.9), are met.

Pursuant to U.S. note 3(d) of subchapter II, Chapter 98, the term "metal" covers:

> (1) the base metals enumerated in additional U.S. note 1 to section XV; (2) arsenic, barium boron, calcium, mercury, selenium, silicon, strontium, tellurium, thorium, uranium and the rare-earth elements; and (3) alloys of any of the foregoing.

Based on the foregoing definition of metals, it is clear that precious metal or metal clad with precious metals was not intended to be included in this subheading. Therefore, the metal wire cloth in this case which is classified under a provision (subheading 7115.90.50, HTSUS) which provides for "other articles of precious metal or of metal clad with precious" is not eligible for the partial duty exemption under subheading 9802.00.60, HTSUS.

Finally, we will address the applicability of subheading 9802.00.80, HTSUS. Subheading 9802.00.80, HTSUS, provides a partial duty exemption for:

> [a]rticles assembled abroad in whole or in part of fabricated components, the product of the United States, which (a) were exported in condition ready for assembly without further fabrication, (b) have not lost their physical identity in such articles by change in form, shape or otherwise, and (c) have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process such as cleaning, lubricating and painting.

All three requirements of subheading 9802.00.80, HTSUS, must be satisfied before a component may receive a duty allowance. An article entered under subheading 9802.00.80, HTSUS, is subject to duty upon the full value of the imported assembled article less the cost or value of the U.S. components, upon compliance with the documentary requirements of section 10.24, Customs Regulations (19 CFR 10.24).

Section 10.16(a), Customs Regulations (19 CFR 10.16(a)) provides, in part, that:

> The assembly operations performed abroad may consist of any method used to join or fit together solid components, such as welding, soldering, riveting, force fitting, gluing, laminating, sewing, or the use of fasteners, and may be preceded, accompanied, or followed by operations incidental to the assembly as illustrated in paragraph (b) of this section.

Pursuant to section 10.16(a), Customs Regulations (19 CFR 10.16(a)), Example three provides that:

> The manufacture abroad of cloth on a loom using thread or yarn exported from the United States on spools, cops, or pirns is not considered an assembly but a weaving operation, and the thread or yarn does not qualify for the exemption.

Consistent with the above-cited example in the regulations, we are of the opinion that the process of weaving U.S.-origin metal wire into cloth in the United Kingdom is not; considered a proper assembly operation under subheading 9802.0().80, HTSUS. Therefore, the U.S.-origin metal wire which is used in the production of metal cloth in the United Kingdom does not qualify for the partial duty exemption under subheading 9802.00.80, HTSUS.

Holding:

Based on our review of the facts involved in NYRL 888508, we are of the opinion that as the metal wire exported to the United Kingdom consists of precious metal, it is precluded from eligibility for the partial duty exemption available under subheading 9802.00.60, HTSUS. In addition, the wire cloth is not eligible for the partial duty exemption available under subheading 9802.00.50, HTSUS, when returned to the U.S., since the article is not exported in condition complete for its intended purpose. Finally, the operation of weaving U.S.-origin metal wire into cloth in the United Kingdom is not considered a proper assembly operation, and therefore, no allowance in duty may be made for the cost or value of the U.S.-origin components under subheading 9802.00.80, HTSUS. Therefore, the returned wire cloth will be dutiable on its full value.

NYRL 888508 is modified accordingly.

JOHN DURANT,
Director,
Commercial Rulings Division.

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

Chief Judge

Dominick L. DiCarlo

Judges

Gregory W. Carman
Jane A. Restani
Thomas J. Aquilino, Jr.
Nicholas Tsoucalas
R. Kenton Musgrave
Richard W. Goldberg

Senior Judges

James L. Watson

Herbert N. Maletz

Bernard Newman

Samuel M. Rosenstein

Clerk

Joseph E. Lombardi

Decisions of the United States Court of International Trade

(Slip Op. 94–9)

KOYO SEIKO CO., LTD. AND KOYO CORP. OF U.S.A., PLAINTIFFS *v.* UNITED STATES, DEFENDANT, AND TIMKEN CO., DEFENDANT-INTERVENOR

Court No. 11–07–00495

(Dated January 18, 1994)

ORDER

TSOUCALAS, *Judge:* Upon consideration of the Results of Redetermination Pursuant to Court Remand, *Koyo Seiko Co., Ltd. and Koyo Corporation of U.S.A. v. United States,* Slip Op. 93–176 (Sept. 9, 1993) ("Remand Results"), submitted by the Department of Commerce, International Trade Administration ("ITA"), and the Court having examined all comments filed in regard to the ITA's Remand Results, it is hereby

ORDERED that this case is further remanded to ITA to recalculate the antidumping duty margins after correcting the error in the calculation of home market credit expenses arising from incorrect computer language. The corrected Remand Results shall be due within fifteen (15) days from the date this order is entered.

(Slip Op. 94–10)

TRANS-BORDER CUSTOMS SERVICES, INC., AS AGENT FOR NATIONAL SAMPLE CARD CO., LTD., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 92–02–00085

[Plaintiff's Motion for Summary Judgment is denied. Defendant's Cross-Motion for Summary Judgment is granted. Judgment entered for defendant.]

(Dated January 20, 1994)

Soller, Shayne & Horn (Gerald B. Horn), (Paulsen K. Vandevert, Margaret Hardy Sachter), of counsel, for plaintiff.

Frank W. Hunger, Assistant Attorney General; *Joseph I. Liebman,* Attorney-in-Charge, International Trade Field Office, Commercial Litigation Branch, Civil Division, United States Department of Justice *(Edith Sanchez Shea);* United States Customs Service *(Sheryl French),* of counsel, for defendant.

MEMORANDUM OPINION

GOLDBERG, *Judge:* This action comes before the court on plaintiff's Motion for Summary Judgment and defendant's Cross-Motion for Summary Judgment pursuant to Rule 56 of the rules of this court. Plaintiff, Trans-Border Customs Services, Inc. ("Trans-Border"), challenges the United States Customs Service's ("Customs"') classification of imported sample books of fabric from Canada. The court exercises jurisdiction under 28 U.S.C. § 1581(a) (1988).

BACKGROUND

Trans-Border is the importer of record and the customs broker acting as agent for National Sample Card Co., Ltd. ("National Sample"), the Canadian manufacturer of the sample books at issue. American manufacturers supply fabric swatches of U.S. origin to National Sample, which incorporates them into its sample books. All other materials used to produce the sample books are of Canadian origin. National Sample manufactures the sample books in Canada. The parties agree that the sample books are products of Canada, pursuant to General Note 3(c)(vii) of the Harmonized Tariff Schedule of the United States ("HTSUS") and Annex 401 of the United States-Canada Free Trade Agreement ("FTA").

Customs issued a ruling letter classifying sample books made by National Sample as "other made-up articles of textile" under subheading 6307.90.9050, HTSUS. Headquarters Ruling Letter ("HRL") 085564, December 14, 1989. Upon National Sample's request, Customs reconsidered its prior classification decision, ultimately changing its position by ruling that "the sample books do qualify as 'samples' within the context of subheading 9813.00.20." HRL 086354, April 17, 1990. Customs further stated that "the sample books may enter the United States as 'samples solely for * * * use in taking orders for merchandise' [under] subheading 9813.00.20, HTSUSA." *Id.* The ruling letter also noted that "[a]pplicable entry requirements set forth in [19 C.F.R.] section 10.31 *et seq*[.], * * * must be met." *Id.*

Subsequently, however, Customs refused entry of the sample books under 9813.00.20, HTSUS, because plaintiff failed to comply with the applicable temporary importation requirements set forth in Note 1(a) to subchapter XIII of Chapter 98, HTSUS.[1] The entry summary for the sample books did not include a statement of intended use, nor a declaration that the articles were not imported for sale or sale-on-approval. The sample books were not exported within one year after importation, and have not yet been exported from the United States. Customs reclassified the sample books at issue under heading 6307.90.9050 HTSUS, as other

[1] Subchapter XIII covers Articles Admitted Temporarily Free of Duty Under Bond. Note 1(a) provides:

"The articles described in the provisions of this subchapter, *when not imported for sale or for sale on approval*, may be admitted into the United States without the payment of duty, under bond for their *exportation within 1 year from the date of importation* * * *."

HTSUS, Chapter 98, subchapter XIII, Note 1(a) (1990) (emphasis added).

Note 1(a) further states that the period of time for exportation of the merchandise, "in the discretion of the Secretary of the Treasury, may be extended, upon application, for one or more further periods which, when added to the initial 1 year shall not exceed a total of 3 years, * * *" subject to exceptions not applicable to this case. *Id.*

made-up articles of textiles, liquidated the entry, and assessed duty on the merchandise at the reduced FTA rate of 5.6% *ad valorem*. Trans-Border paid all liquidated duties as required by law. Trans-Border then filed a timely protest to the reclassification, which Customs denied on December 3, 1991.

Trans-Border brings this action contesting the denial of its protest. Trans-Border asserts in its motion for summary judgment that the subject merchandise is properly classified under subheading 9813.00.20, HTSUS, Column 1, Special, and is thus unconditionally free of duty as a product of Canada. Defendant has filed a cross-motion for summary judgment, arguing that Customs' denial of classification under subheading 9813.00.20, HTSUS, was correct because Trans-Border failed to satisfy the requirements of Note 1(a) to subchapter XIII, Chapter 98, HTSUS.

TARIFF PROVISIONS

Chapter 98, subchapter XIII, HTSUS (1990), provides in pertinent part:

Heading/ subheading	Article description	Rates of duty		
		1		2
		General	Special	
9813.00.20	Samples solely for use in taking orders for merchandise	Free, under bond, as prescribed in U.S. note 1 to this subchapter	Free (CA)	Free, under bond, as prescribed in U.S. note 1 to this subchapter

DISCUSSION

Summary judgment is appropriate upon a showing "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." USCIT R. 56(d). As the parties note, no genuine issues of material fact remain in dispute in this case. There is no dispute over the descriptive portion of heading 9813.00.20, HTSUS, as the parties agree the imported sample books at issue are "samples" for purposes of this heading. The sole issue to be decided is whether, as a matter of law, samples from Canada are subject to the requirements of Note 1(a) to subchapter XIII, Chapter 98, HTSUS.

Note 1(a) provides that all merchandise listed under subchapter XIII is eligible for temporary duty-free treatment upon compliance with three requirements. First, the merchandise must not be imported for sale or sale-on-approval. Second, the merchandise must be imported under bond. Third, the merchandise must be exported within one year from the date of importation, subject to extensions of up to three years granted at the Secretary of the Treasury's discretion, upon application. Customs regulations further require that the importer declare upon entry the intended use of the merchandise, and state its intent not to sell the merchandise in the United States. 19 C.F.R. § 10.31 (1990).

Both parties recognize that, pursuant to Presidential Proclamation No. 5923, 53 Fed. Reg. 50,638 (December 14, 1988), which was issued to implement the FTA, a bond is no longer required for importations of merchandise of Canadian origin under heading 9813.00.20, HTSUS. The parties disagree, however, as to whether the remaining terms of Note 1(a) are still applicable in order for samples from Canada to receive duty-free treatment. The court's analysis begins with an examination of how Note 1(a) fits within the statutory framework of the relevant tariff provisions. The court will then examine how the FTA affected Note 1(a) requirements as applied to merchandise from Canada.

A. *Statutory Framework:*

Customs' decision to deny entry of the merchandise in issue under 9813.00.20 is presumptively correct, and the importer has the burden of proving otherwise. 28 U.S.C. § 2639(a)(1) (1988); *see Jarvis Clark Co. v. United States,* 2 Fed. Cir. (T) 70, 75, 733 F.2d 873, 878 (1984). The meaning of a tariff term is a question of law. *Digital Equip. Corp. v. United States,* 8 Fed. Cir. (T) 5, 6, 889 F.2d 267, 268 (1989). As with any statute, construction of a tariff provision must begin with a consideration of the statutory language itself. *See Consumer Product Safety Comm'n v. GTE Sylvania, Inc.,* 447 U.S. 102, 108 (1980). The court begins its analysis with the fundamental rule that where a statute is clear and unambiguous, "that is the end of the matter[,] for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.,* 467 U.S. 837, 842–843 (1984).

Trans-Border argues that the language "Free (CA)" in Column 1, Special, is plain, clear, and unambiguous, indicating that samples from Canada are entitled to unconditional duty-free treatment. Memorandum of Law in Support of Plaintiff's Motion for Summary Judgment ("Pl. Br.") at 11. Trans-Border contends that absent ambiguity in the statutory language of Column 1, Special, neither the court nor Customs is at liberty to conjure up conditions allowing for interpretive construction of the statute. Trans-Border argues that because Column 1, Special, in 9813.00.20, HTSUS, makes no reference to Note 1(a), samples from Canada cannot be subject to any of the Note's conditions. Trans-Border further argues that neither the title of subchapter XIII ("Articles Admitted Temporarily Free of Duty Under Bond"), nor the references to Note 1 in the neighboring duty columns, *i.e.,* Column 1, General, and Column 2, can be the basis for application of Note 1(a) requirements to Column 1, Special. Pl. Br. at 13–14.

In determining the plain meaning of the statute, "the court must look to the particular statutory language at issue, as well as the language and design of the statute *as a whole." K Mart Corp. v. Cartier, Inc.,* 486 U.S. 281, 291 (1988) (emphasis added); *United States v. Heirs of Boisdore,* 49 U.S. (8 How.) 113, 122 (1850). The section or chapter Notes form an integral part of the Harmonized Tariff System and have the same legal force as the text of the headings. *See Spradling International, Inc. v.*

United States, 17 CIT ___, ___, 811 F. Supp. 687, 690–691 (1993) (upon finding the statutory language of Headnote 2(C) for Item 355.81, TSUS, unclear, the court proceeded to examine the legislative history of that Headnote and its 1984 amendment); *see also E.R. Hawthorne & Co. v. United States,* 730 F.2d 1490, 2 Fed. Cir. (T) 53 (1984); HTSUS General Rules of Interpretation, R; 1 (1990) ("[c]lassification shall be determined according to the terms of the headings and any relative *section or chapter notes* * * *." (emphasis added)). The function of the Notes is to define the precise scope of each heading, subheading, chapter, subchapter, and section. *See, e.g., H. Reisman Corp. v. United States,* No. 92–08–00569, slip op. 93–227 at 5 (CIT Dec. 1, 1993) ("Chapter note 1 defines with great specificity the types of merchandise that are included within Chapter 29."); *Ugg International, Inc. v. United States,* 17 CIT ___, ___, 813 F. Supp. 848, 853 (1993).

Trans-Border errs in limiting its plain meaning analysis of the statutes to only the words "Free (CA)" in Column 1, Special. Note 1(a) is not extrinsic to the terms of the subheadings within Chapter 98, subchapter XIII; rather, Note 1(a) is an intrinsic part of the statutory scheme of this subchapter of the Harmonized Tariff System as enacted by Congress, and is applicable to all of the subheadings in this subchapter. Column 1, General, and Column 2 highlight the bond requirement, stating "Free, under bond, as prescribed in U.S. note 1 to this sub-chapter." Note 1(a), however, is not applicable to these columns merely because it is referenced in the text of each of the headings. Rather, the conditions of Note 1(a) would be applicable even if it was not specifically mentioned in Column 1, General, because Congress legislated the subchapter Notes as an integral part of the statutory scheme.[2]

The court's determination of congressional intent in the tariff schedules requires reading all parts of the statute together, including the relevant headnotes, which are the primary source for ascertaining such intent. *Clipper Belt Lacer Co., Inc. v. United States,* 14 CIT 146, 158, 738 F. Supp. 528, 540 (1990) (citing *Lyons Export & Import, Inc. v. United States,* 59 CCPA 142, 146, 461 F.2d 830, 833 (1972); *Phillipp Overseas, Inc. v. United States,* 84 Cust. Ct. 200, 203, 496 F. Supp. 273, 276 (1980), *aff'd,* 68 CCPA 43, 651 F.2d 747 (1981); *C.J. Tower & Sons of Buffalo, Inc. v. United States,* 68 Cust. Ct. 377, 379–380, 343 F. Supp. 1387, 1390 (1972); *United States v. Patel,* 762 F.2d 784 (9th Cir. 1985)), *aff'd,* 9 Fed. Cir. (T) 55, 923 F.2d 835 (1991).

The term "free" isolated in Column 1, Special, when taken out of context, is meaningless because all importations of items listed in subchapter XIII of Chapter 98, regardless of the country of origin, may receive duty-free treatment provided the importer satisfies the requirements set out in Note 1(a). Compliance with the terms of the Headnotes, as well

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[2] The Explanatory Notes, in contrast to the chapter and section Notes, are not controlling nor legally binding. The Explanatory Notes provide useful commentary on the scope of each heading of the Harmonized System, but should not be treated as dispositive. Joint Committee Report on the Omnibus Trade and Competitiveness Act of 1988, H.R. Conf. Rep. No. 100–576, 100th Cong., 2d Sess. at 549 (1988).

as the pertinent regulations associated with the claimed duty-free entry under the HTSUS, is mandatory. *See PPG Industries, Inc. v. United States,* 7 CIT 118, 128 (1984).

Congress' rationale for subchapter XIII of the HTSUS[3] is that an article temporarily imported, and subsequently exported, does not actually enter the U.S. market and thus "should be exempt from duty because it is not in reality an importation for consumption." S. Rep. No. 1081, 88th Cong., 2d Sess. (June 16, 1964) (justifying amendment to section 308(1) of the Tariff Act of 1930 to add aircraft engines, propellers, and parts and accessories, to the temporary-importations-under-bond list). Articles under the subheadings in subchapter XIII are entered into the United States on a temporary basis for specific limited purposes, such as modeling (9813.00.10, HTSUS), testing (9813.00.30, HTSUS), or exhibition (9813.00.60, HTSUS). These articles are not expected to be sold or consumed themselves but are to be used to facilitate other aspects of business or other purposes. Trans-Border's claimed construction would necessarily apply to all of the provisions in subchapter XIII, and would eviscerate the thrust of the Temporary Importations provisions contained in this chapter.

Furthermore, other tariff headings do provide unconditional duty-free treatment for certain samples. *See, e.g.,* Chapter 98, subchapter XI, subheadings 9811.00.20, 9811.00.40, and 9811.00.60, HTSUS (1990). For example, subheading 9811.00.60 provides unconditional duty-free entry for samples, subject to the strict restrictions that the samples be: (1) valued not over $1.00 each; (2) marked, torn, perforated or otherwise treated so that they are unsuitable for use other than as samples; and (3) used only to solicit orders in the United States for products of foreign countries. Congress enacted 9813.00.20 without such restrictions on the value or condition of the samples, but did impose the temporal, use, and bond requirements of Note 1(a) as necessary conditions for duty-free treatment.

Thus, all importations of items in subchapter XIII, Chapter 98, HTSUS, are eligible for duty-free entry provided the requirements of Note 1(a) are satisfied. Importations from Canada, however, were affected by the U.S.-Canada FTA. The next issue to resolve is whether the FTA removed all other Note 1(a) requirements for merchandise from Canada, in addition to the Note's bond requirement.

B. *Presidential Proclamation No. 5923 and the FTA:*

On January 2, 1988, the President entered into the United States-Canada Free Trade Agreement. In approving the FTA, Congress authorized the President to proclaim such modifications of existing duties or excise treatment as he determines are necessary or appropriate to

[3] The temporary bond provisions of Chapter 98, subchapter XIII, HTSUS are substantively the same as those originally set forth in the 1930 Tariff Act; those differences that do exist are not pertinent to this case. *Compare* Chapter 98, subchapter XIII, HTSUS (1990) *with* Schedule 8, Part 5, subpart C, TSUS (1963) *with* Tariff Act of 1930, Pub. L. No. 361, 308, 46 Stat. 590, 690 (1930). *See also* United States Tariff Commission, The Tariff Classification Study of 1960: Explanatory and Background Materials (Schedule 8, Part 5) 79 (1960).

carry out the provisions of Article 401 of the FTA. United States-Canada Free Trade Agreement Implementation Act of 1988, Pub. L. No. 100–449, § 201(a), 102 Stat. 1851, 1855–56 (Sep. 28, 1988). Article 401 of the FTA provides for continuing duty-free treatment for certain goods, including articles admitted temporarily free of duty under bond. In Annex III to Presidential Proclamation No. 5923, the bond requirement was eliminated for all subheadings under chapter 98, subchapter XIII, HTSUS.

Prior to enactment of the U.S.-Canada FTA, Column 1, Special in Chapter 98, subchapter XIII, was blank. Contrary to plaintiff's assertions, no references to Note 1(a) were deleted, discarded, or abolished from Column 1, Special, by the U.S.-Canada FTA. Pl. Br. at 12. Rather, after Presidential Proclamation No. 5923, the tariff schedules were amended by adding "Free (CA)" to the previously blank Column 1, Special. Thus, Trans-Border's contention that Customs seeks to read deleted language back into the statute is completely unfounded.

Customs concedes that the FTA modified the temporary importation requirements by eliminating the bond requirement for goods covered by subchapter XIII from Canada. Neither Congress' subsequent modifications of Column 1, Special, nor Presidential Proclamation No. 5923, however, refer to any modification of the time requirements for temporary importations from Canada. Trans-Border argues that the failure of both the Presidential Proclamation, and of Congress itself, to reference Note 1(a) or any other temporary importation restriction on samples from Canada "'provides strong affirmative evidence that' Congress intended that samples from Canada were to be admitted unconditionally duty free, and not as temporary importations." Pl. Reply Br. at 17 (citation omitted). However, neither the Presidential Proclamation nor Congress needed to provide for such time requirements for temporary importation, because Congress had already provided such requirements when it first enacted Note 1(a) and the associated headings eligible for temporary duty-free importations.

The inference that Congress has consented to the revocation of one of its own acts, merely because of its failure to act, rests upon a weak foundation. *Springer v. Government of the Philippine Islands,* 277 U.S. 189, 209 (1928). The absence or omission of a reference to time restrictions on samples from Canada in the modified Column 1, Special, does not constitute an outright rejection of the statutory scheme intended by Congress when it enacted the temporary importation provision of Chapter 98, subchapter XIII, HTSUS, subject to the Note 1(a) conditions. *See also Markham v. Cabell,* 326 U.S. 404, 411 (1945). Congress could have provided for unconditional duty-free treatment for samples from Canada by including it under those provisions for samples that are entitled to unconditional duty-free entry. Congress also could have further modified the heading in Column 1, Special, to clearly establish its intent to provide unconditional duty-free entry for articles from Canada. Similarly, pursuant to Section 201(a) of the FTA Implementation Act, the

President could have indicated in his Presidential Proclamation that Canadian merchandise covered by the headings of subchapter XIII, Chapter 98, should be imported unconditionally duty-free. Likewise, the President could have expressly waived all Note 1(a) requirements for Canadian goods covered by this subchapter. The inescapable fact is that neither the President nor Congress chose to do so. The court will not construe a removal of the temporary importation requirements established by Congress where Congress and the President had opportunity to do so, but simply did not evince such an intent.

The court's ruling is consistent with the purpose of the U.S.-Canada FTA. The usual amount of the requisite bond is twice the amount of duty estimated to accrue, had the articles been entered under an ordinary consumption entry; the bond for samples intended solely for use in taking orders, *i.e.* entered under subheading 9813.00.20, HTSUS, is an amount equal to 110 percent of the estimated duties. 19 C.F.R. § 10.31(f) (1990). Exempting Canadian merchandise from the bond requirement reduces costs and facilitates importation, thus placing Canadian merchandise in a better position than merchandise from other countries. Customs thus affords samples from Canada a preference over samples from third countries which continue to be subject to the bond requirement. It does not necessarily follow that because the FTA waived one condition, *i.e.* the bond requirement, for duty-free treatment under this chapter, that all other requirements, including the need to export the merchandise and to declare the merchandise's intended use, were also necessarily waived.

Thus, absent an express statement demonstrating an intent to eliminate the Note 1(a) requirements for all goods from Canada under subchapter XIII, Chapter 98, HTSUS, the other requirements provided by Congress in Note 1(a) remain generally applicable to the articles listed under subchapter XIII, including those articles considered temporary importations from Canada.

CONCLUSION

Duty-free entry is available for all importations of items covered by subchapter XIII, Chapter 98, HTSUS, subject to compliance with the requirements of Note 1(a). The United States-Canada Free Trade Agreement removed the bond requirement for articles imported from Canada under this subchapter. However, neither Congress, in amending the tariff schedules, nor the President's Proclamation, issued pursuant to the U.S.-Canada FTA Implementation Act, provided unconditional duty-free entry for merchandise from Canada; this includes samples from Canada. Absent an express statement departing from the existing statutory framework, this court will not eradicate the temporary import requirements as applied to samples from Canada that are entered under subheading 9813.00.20, HTSUS. The government's cross-motion for summary judgment is therefore granted; judgment will be entered accordingly.

ABSTRACTED CLASSIFICATION DECISIONS

DECISION NO. DATE JUDGE	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
C94/5 1/18/94 Aquilino, J.	Novus Electronics, Inc.	83–08–01222	Watch movements 716.09 through 716.45 watches 715.05, etc. Various rates	688.40, 688.45, 688.43 or 688.42, etc. Various rates	Belfont Sales Corp. *v.* United States 878 F.2d 1413 (1989) or Texas Instruments *v.* United States 673 F.2d 1375 (1982)	New York Quartz analog and digi-ana watches, etc.
C94/6 1/18/94 DiCarlo, J.	Spradling International, Inc.	91–04–00262	355.85 5.3%	355.81 Duty rate of zero	Agreed statement of facts	Miami Plastic-covered textile fabrics
C94/7 1/19/94 Aquilino, J.	Leisurecraft Products, Ltd.	83–11–01648	Watch movements 716.09 through 716.45 watches 715.05, etc. Various rates	688.40, 688.45, 688.43 or 688.42, etc. Various rates	Belfont Sales Corp. *v.* United States 878 F.2d 1413 (1989) or Texas Instruments *v.* United States 673 F.2d 1375 (1982)	New York Quartz analog and digi-ana watches, etc.
C94/8 1/19/94 DiCarlo, J.	Mattel, Inc.	88–09–00705	737.95, 737.49 12.3%, 10.9%, 9.6% and 8.3%	912.20 Free of duty (except ballons, marbles, dice and diecast vehicles)	Mattel, Inc. *v.* United States 926 F.2d 1116 (1991)	Los Angeles Various toys not over five cents per unit
C94/9 1/21/94 Restani, J.	Mattel, Inc.	92–07–00426	737.23 12%	737.23 Temporarily suspended by Item 912.30	Sec. 1804(a)(11) of Omnibus Trade and Competitiveness Act of 1988 Public Law 100–418	Dallas/Fort Worth Stuffed dolls

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